IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1941

No._____

In the Matter of

MT. FOREST FUR FARMS OF AMERICA, INC.,
a Delaware Corporation,
Debtor.

FRANK FITZGERALD, Trustee for MT. FOREST FUR FARMS OF AMERICA, INC.,
Petitioner,

v.

GULF REFINING COMPANY OF LOUISIANA, et al.,
Respondents.

FRANK FITZGERALD, Trustee for MT. FOREST FUR FARMS OF AMERICA, INC.,
Petitioner,

v.

ERNEST COCKRELL, et al.,
Respondents.

FRANK FITZGERALD, Trustee for MT. FOREST FUR FARMS OF AMERICA, INC., et al.,
Petitioners,

v.

ERNEST COCKRELL, et al.,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI

I.

OPINIONS BELOW

Opinions below have been described in the petition for writs of certiorari under the caption "Opinions Below".

II.

JURISDICTION

The statement as to jurisdiction has heretofore been set forth in the petition for writs of certiorari under the caption "Jurisdiction".

III.

STATEMENT OF THE CASE

The facts have been adequately stated in the petition for writs of certiorari under the caption "Summary Statement."

IV.

SPECIFICATIONS OF ERROR

1) The Circuit Court of Appeals erred in reversing and in not affirming the decision of the District Court which denied respondents' motions to dismiss the proceedings for lack of jurisdiction.

2) The Circuit Court of Appeals erred in holding that possession alone, and not property interest, is the test of jurisdiction in corporate reorganization proceedings brought under Chapter X of the Bankruptcy Act.

3) The Circuit Court of Appeals erred in holding that the bankruptcy court in which corporate reorganization proceedings are pending did not have power to issue process outside of its district as against adverse claimants.

4) The Circuit Court of Appeals erred in holding that the *res* in controversy was not the land containing the minerals, but was a legal concept in the nature of a right to remove minerals; and that the trustee, one of the petitioners herein, was not in possession of the *res*, even though he was in possession of the land containing the minerals, and held the undisputed title to said lands.

5) The Circuit Court of Appeals erred in disregard-

ing the Trial Court's findings of fact, without in any manner undertaking to assail the correctness thereof.

6) The Circuit Court of Appeals erred in not affirming the decision of the District Court on the merits of the controversy.

V.

SUMMARY OF ARGUMENT

A) The test of jurisdiction in corporate reorganization proceedings under the Chandler Act is the property interest of the debtor in, and not its possession of, the res in controversy.

B) There is no substantial difference between a summary and a plenary proceeding where comprehensive pleadings are filed and a complete trial on all issues is had by all parties.

C) A bankruptcy court in corporate reorganization proceedings under the Chandler Act has the power to issue process outside of its district as against adverse claimants.

D) Arguendo, if possession be the test of such jurisdiction, then under the decisions of this Court, the debtor was in possession of the res in controversy.

E) Findings of fact of a trial court are binding upon the appellate court unless clearly erroneous and may not be ignored or disregarded by such appellate court.

F) The questions involved are of vital importance to some 3500 shareholders of the debtor who have been attempting for many years to obtain an adjudication of their rights in one of the most valuable mineral tracts in the world, and said shareholders may be without an adequate forum where jurisdiction and venue exist over all the respondents, if not permitted to proceed herein.

VI.
ARGUMENT

A
THE TEST OF JURISDICTION OF THE BANKRUPTCY COURT OVER THE PROPERTY OF THE DEBTOR IN CORPORATE REORGANIZATION UNDER THE CHANDLER ACT IS PROPERTY INTEREST AND NOT POSSESSION

The petitioners submit that, contrary to the rule in straight bankruptcy or equity receivership proceedings, the test of jurisdiction of the bankruptcy court over the property of the debtor in corporate reorganization under the Chandler Act is *property interest* and not *possession*. The petitioners submit that particularly in writing Sections 102 and 111 into Chapter X of the Bankruptcy Act, Congress definitely enhanced and enlarged the jurisdiction of the bankruptcy court in corporate reorganization over that in ordinary bankruptcy and shifted the emphasis from "possession" to "property".

Section 111 provides that:

> "Where not inconsistent with the provisions of this Chapter, the court in which a petition is filed shall, for the purposes of this Chapter, have exclusive jurisdiction of the debtor and its property wherever located."

Section 102, *inter alia*, provides that Section 23 of the old Bankruptcy Act is inapplicable to corporate reorganization proceedings.

Section 23 provides as follows:

> "The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this Act, between receivers and trustees as such

and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this Act had not been instituted, unless by consent of the defendant, except as provided in sections 60, 67, and 70 of this Act."

Sections 60, 67 and 70 thus referred to in Section 23b, *supra*, relate to unlawful preferences, liens and fraudulent transfers. It is the established rule in straight bankruptcy proceedings that under Section 23 the trustee may bring suit in the bankruptcy court without respect to the citizenship of the bankrupt, the amount in controversy, *et cetera*, only in the above instances. Section 23 requires that in all other proceedings in straight bankruptcy against adverse claimants, the trustee may not bring suit in any jurisdiction unless the bankrupt could have done so. See Finletter's *The Law of Bankruptcy Reorganization*, pp. 179-180 (1939).

Section 77B of the Bankruptcy Act, in Sub-section k, enumerated certain sections of the regular Bankruptcy Act which were inapplicable to corporation reorganization, but it made no mention of Section 23.

Considerable confusion arose both in the lower federal courts and among text writers as to whether or not Section 23 was applicable to corporate reorganizations under

Section 77B of the Bankruptcy Act, * but that confusion was eliminated by Section 102 of the Chandler Act specifically declaring Section 23 inapplicable to Chapter X proceedings.

It is thus apparent that by virtue of the elimination of the applicability of Section 23, Congress has given to the court, conducting the reorganization proceedings, jurisdiction over independent actions to recover property in the hands of adverse claimants, when such actions are necessary to effect the debtor's reorganization. Construing Sections 102 and 111 of the Chandler Act, petitioners submit that it was clearly the intention of Congress thereunder to give to the bankruptcy court, in which the reorganization proceedings are pending, jurisdiction over the debtor's property wherever located without regard to who may be in possession thereof, that such jurisdiction is given for the purpose of expediting the reorganization of the debtor, and that the trustee, in pursuing said property, is not subjected to those jurisdictional limitations imposed by Section 23 in an ordinary bankruptcy proceeding.

The reasons for thus extending the jurisdiction of the bankruptcy court in corporate reorganization are obvious. In ordinary bankruptcy proceedings, liquidation is the sole objective, and neither the venue nor the jurisdiction of a particular dispute is of any ultimate significance. It is of vital importance, however, in corporation reorganization, where rehabilitation of the debtor is the objective, that the court which is responsible for effecting a reorganization shall have control over all of the prop-

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* The Law of Bankruptcy Reorganization—Finletter, Page 179-180 (1939).
49 Harvard Law Review 1147.
In re Standard Gas & Electric Company, 119 Fed. (2d) 658, 662-63 (C. C. A. 3, 1941).
See also statement of John Gerdes before the sub-committee of the Committee on the Judiciary of the United States Senate; 75th Congress, Second Session, H.R. 8046, January 19, 1938, at page 77.

erty of the debtor in whosever hands the same may be and wherever situated.

Both this Court and able text writers have recognized the necessity for this distinction between corporate reorganization and ordinary bankruptcy. Although concerned with Section 77 of the Bankruptcy Act, relating to railroad reorganization, this Court gave expression to the spirit of corporate rehabilitation in the case of *Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co.*, 294 U. S. 648 (1935). Mr. Justice Sutherland stated on page 676 thereof:

> "It may be that in ordinary bankruptcy proceeding the issue of an injunction in the circumstances here presented would not be sustained. As to that it is not necessary to express an opinion. But a proceeding under Section 77 is not an ordinary proceeding in bankruptcy. It is a special proceeding which seeks only to bring about a reorganization, if a satisfactory plan to that end can be devised. And to prevent the attainment of that object is to defeat the very end the accomplishment of which was the sole aim of the section, and thereby to render its provisions futile."

In a recent article appearing in the Harvard Law Review, (Volume 49, page 1131) the decision of this Court in the case above cited is commented upon and the same distinction between ordinary bankruptcy and corporate reorganization is recognized in the following excerpt:

> "With the shift in the jurisdictional basis from *possession to 'property'*, case law must define the extent of the debtor's interest in a *res* that is necessary to subject it to the reorganization court's jurisdiction. Of course, property of the debtor in-

> cludes bankruptcy concepts, but the question of whether the reorganization court's jurisdiction extends beyond prior bankruptcy limits was presented to the Supreme Court in *Continental Illinois National Bank & Trust Co. v. Chicago, R. I. & Pac. Ry.* * * * The Court by sustaining the injunction assumed that the bankruptcy requirement of possession was unnecessary under Section 77 and held that the debtor's equity in the securities was sufficient property under subdivision (a) to confer jurisdiction on the reorganization court."

Another well known text writer on corporate reorganization, Thomas K. Finletter, in his work on *The Law of Bankruptcy Reorganization* (1939), thus states his concept of the problem on pages 145-147 thereof:

> "The reorganization court, except under Chapter XI, thus has a wider jurisdiction than either of its predecessors, both in the extent of the property over which it has dominion, and the amount of control which it may exercise over that property. * * * The full jurisdiction of the reorganization court accordingly extends not only to property in the possession of the debtor but also to pledged assets or property in the possession of a mortgagee or other secured creditor. By this extension of its scope, the power of the reorganization court is freed of the in personam limitations of the equity and ordinary bankruptcy courts and approaches a jurisdiction in rem."

See also Gerdes on *Corporate Reorganizations*, Vol. 2, pp. 1368, 1383.

While this court has passed upon the jurisdiction of the bankruptcy court over the property of a debtor in railroad reorganizations, *Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co.*, supra, and *Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478 (1940), it has never passed upon the extent or the limitations of the jurisdiction of the bankruptcy court over the debtor's property in corporate reorganizations under Chapter X of the Chandler Act, and particularly has it not considered Section 111 in conjunction with Section 102 of the Act, making Section 23 of the Bankruptcy Act inapplicable. Because of the pressing importance of this problem, not only in the instant reorganization, but in similar proceedings throughout the United States, this Court should grant certiorari and determine this issue.

With the exception of the court below, only one other appellate court has passed upon this problem. While the Sixth Circuit, in the instant case, denied that Sections 111 and 102 enlarged the jurisdiction of the bankruptcy court in corporate reorganizations as above submitted (R. V-2533-34), the Fourth Circuit Court of Appeals, in the recent case of *Warder v. Brady*, 115 Fed. (2d) 89 (1940), although refusing to accept jurisdiction on the particular facts presented to it, diametrically differed with the court below in its construction and interpretation of Sections 102 and 111 of the Chandler Act. Petitioners, therefore, submit that this court should grant *certiorari* for the purpose of resolving this conflict between the Fourth and Sixth Circuits.

In *Warder v. Brady, supra*, the court was concerned with a simple turn-over order directing the respondent to pay money to the trustee, and under these facts, it re-

jected summary jurisdiction. However, in reviewing the meaning and history of the new sections of the Chandler Act, the court recognized the shift in emphasis from "possession" to "property" in the following language:

> "These cases relating to ordinary bankruptcy procedure, and are not conclusive here. The bankruptcy court in reorganization proceedings under Section 77B, 11 U.S.C.A. Section 207, had, and under Ch. X of the 1938 Act now has a wider control, that comprehends not only property of the debtor in his actual or constructive possession, but also property of the debtor in the hands of lien holders. The formulation of a plan of reorganization contemplates a readjustment of secured as well as unsecured debts, **and so the summary power of the court extends to all of the debtor's property that can be affected by a plan, whether or not the property is in his possession."**

Even more significant than this, the court held, as contended for by the petitioners herein, that, with the elimination of Section 23, by virtue of Section 102 of the Chandler Act, the court, in which the corporate reorganization proceedings are pending, has the right to hear and determine a controversy as to property even as against adverse claimants. On page 94 of its opinion, the court thus stated:

> "Heretofore, the dependent jurisdiction of the courts of bankruptcy was restricted by Section 23 and by the rule of comity, but now that Sec. 23 is no longer applicable to reorganization proceedings under Ch. X, and the power to interfere in a prior proceeding has been conferred upon the bankruptcy court by Congress in the exercise of the bankruptcy power, **it seems clear that the bankruptcy**

court under Ch. X has jurisdiction to entertain all suits to which its trustee or the debtor in possession is a party, even though they be instituted against adverse claimants."

A brief reference to the history of the Chandler Act may be instructive. Because of the technical nature of the bill, there was limited discussion of individual sections of the Chandler Act in either the Senate or the House of Representatives at the time the Act was passed.* A careful reading of the hearings before the Judiciary Committees of both the Senate and the House, however, clearly reveals that it was the intention of the framers of the Act to extend and enhance the jurisdiction of a bankruptcy court in corporate reorganization over that in ordinary bankruptcy or equity receivership cases.

As one indication of that intention, we refer to statements made during the hearing before the Committee on the Judiciary of the House of Representatives for the Seventy-fifth Congress, First Session, on the Chandler Act. On pages 241 and 242 thereof, there appears a colloquy between the Honorable Walter Chandler, representative in Congress from the State of Tennessee, and Mr. Jacob I. Weinstein, member of the National Bankruptcy Conference. Even though that colloquy took

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* Congressional Record, Vol. 81, Part 8, 75th Congress, First Session, House of Representatives, H.R. 8046, at Pages 8645, 8648, 8649;

Congressional Record, Vol. 83, Part 8, 75th Congress, Third Session, Senate, Pages 8680, 8682.

Congressional Record, Vol. 83, Part 8, 75th Congress, Third Session, House of Representatives, Page 9106.

Typical is the statement of Congressman Michener, Page 8648, *supra:*

> "Mr. Chairman, I am not going to take any time explaining this bill. It is technical and no superficial explanation will be helpful. The gentleman from Tennessee (Mr. Chandler) has stated the objectives and it would take several hours to discuss all of the bill's provisions. * * *"

place before Section 102 was amended in its present form, it clearly demonstrates that the objections, as voiced by the respondents herein to extending jurisdiction of the court in which reorganization proceedings are pending, were considered by Congress and were rejected. As expressed therein, Congress deemed it preferable to require a citizen of Texas to come to Detroit to contest, in the reorganization court in Detroit, title to property located in Texas, than to go back to the old idea of ancillary receiverships and litigation throughout the country.

The word *"property"* as written into Section 111 is at best difficult of definition. Petitioners submit that it is important that this Court grant certiorari for the purpose of defining said term as used in the Chandler Act, and for the purpose of establishing the extent of and the limitations on the bankruptcy court's jurisdiction over the property of the debtor being reorganized. There is no decision of this Court bearing thereon, and the only two Circuits which have directly passed upon Sections 102 and 111 are in conflict as to the interpretation thereof.

B.

THERE IS NO SUBSTANTIAL DIFFERENCE BETWEEN A SUMMARY AND PLENARY PROCEEDING WHERE COMPREHENSIVE PLEADINGS ARE FILED AND A COMPLETE TRIAL ON ALL ISSUES IS HAD BY ALL PARTIES.

In the preceding section, we have argued that the Chandler Act has extended and enhanced the jurisdiction of the bankruptcy court over the property of the debtor before it in corporate reorganization, *inter alia*, by shifting the emphasis from *possession by* to *property interest of* the debtor. The next problem that logically arises

concerns itself with the method of exercising that jurisdiction, and largely resolves itself into whether the bankruptcy court, in which the reorganization proceedings are pending, shall proceed by way of plenary or summary proceedings.

The difference between summary and plenary proceedings is solely one of degree. Usually the former is started by petition and the necessary parties are cited into court by orders to show cause, whereas in the latter, the proceedings are begun by complaint and a summons brings in the parties. See *Finletter, The Law of Bankruptcy Reorganization*, page 156 (1939).

Some doubt has been expressed by lower courts and by text writers as to whether the enhanced jurisdiction of the bankruptcy court in corporate reorganization extends to summary as well as to plenary proceedings. Some have expressed the thought that *possession* is still the test of summary proceedings even under Sections 102 and 111 of the Chandler Act. However, insofar as the instant case is concerned, we submit that the distinction between summary and plenary proceedings is immaterial and that we are solely concerned with the primary problem of the extent of the bankruptcy court's jurisdiction over the property of the debtor wherever located.

It is well established law that the distinction between plenary and summary proceedings is purely procedural, or, as stated above, solely a matter of degree. Where comprehensive pleadings are filed and a full hearing and a complete trial is had by all parties, there is, in effect, no valid distinction between summary and plenary proceedings. See *Harris v. Avery Brundage Co.*, 305 U. S. 160, 164 (1938).

In the instant case, the record speaks for itself. Not only were a number of long, dilatory and jurisdictional motions filed by the respondents, but the corporate respondents filed an answer, which in its reduced form in the printed record, covers nearly 40 pages (R. I-143-180). Over a month was consumed in the actual trial of the case with both the Trustee and the respondents calling numerous witnesses, offering many depositions, as well as literally hundreds of written and printed exhibits. At the conclusion thereof, oral arguments were heard lasting two full days, printed briefs were filed, and proposed findings of fact and conclusions of law were submitted by counsel for all parties concerned.

Under these facts, we believe the distinction between summary and plenary proceedings vanishes. We cite the very apposite language of the Eighth Circuit Court of Appeals in the case of *Central Republic Bank & Trust Co. v. Caldwell*, 58 Fed. (2d) 721 at 732 (1932), where the court stated:

> "In the instant case, although formal pleadings were not filed by all the parties interested, yet the issue presented by the intervening petition was clear-cut and fully understood by the parties. There is no complaint as to this. The interveners on the one hand, and the bankruptcy receiver and the petitioning creditors on the other, presented their evidence in open court. There is no complaint by interveners that they did not have full opportunity to introduce their evidence and present their arguments to the court. Briefs were furnished after the hearing. All of the earmarks of a full and complete hearing are shown by the record. *Under such circumstances, the proceeding was in substance and effect a plenary suit.*"

To the same effect, see also *Board of Trade of City of Chicago v. Johnson*, 283 Fed. 374, 380 (C.C.A. 7, 1922) (Reversed on other grounds, 264 U.S. 1); *In re Rockford Produce & Sales Co.* 275 Fed. 811 (C. C. A. 7, 1921); *Clements v. Conyers*, 31 Fed. (2d) 563 (C.C.A. 7, 1928).

Respondents argued below that inasmuch as the Trustee had formally labeled his petition as "Summary", he could not be heard to say that the proceeding was not "Summary". Such is not our position. We do not deny that our proceeding was labeled "Summary", but we do insist that in substance it was no different than if we had called the proceeding "Plenary", since there were complete pleadings filed and a full trial had by all parties. The petitioners, therefore, reiterate that it is immaterial, insofar as determining the court's jurisdiction in the instant proceedings, whether the Trustee's proceedings be styled "Summary" or "Plenary".

C.

A BANKRUPTCY COURT IN CORPORATE REORGANIZATION PROCEEDINGS UNDER THE CHANDLER ACT HAS THE POWER TO ISSUE PROCESS OUTSIDE OF ITS DISTRICT AS AGAINST ADVERSE CLAIMANTS.

A corollary problem, also open and undecided by this Court, which arises in conjunction therewith, relates to the power of the bankruptcy court in which the reorganization proceedings are pending to issue process outside of its district. For purposes of this discussion, petitioners submit that it matters not, in this particular instance, whether the proceedings be called "summary" or "plenary", since, as set forth immediately hereinabove all parties had a full hearing on all issues involved.

The problem of extra-territorial service of process is implicit in Sections 102 and 111 of the Chandler Act. It is well established that one of the fundamental purposes of corporate reorganization was to avoid the difficulties of equity receiverships with the attendant evil of ancillary proceedings.* One of the obvious purposes of the Chandler Act was to concentrate, in the hands of one court responsible for the rehabilitation and reorganization of a debtor doing business through the county, all of the debtor's assets and property wherever located. It logically follows that if the court in charge of the reorganization is to have control of the debtor's property wherever located, it must necessarily have the power to issue process with respect to exercising its control over that property.†

The argument in favor of extra-territorial process in corporate reorganization is further strengthened by Section 102 of the Chandler Act. With the elimination of Section 23 from corporate reorganizations under the Chandler Act, petitioners submit that there is implied by necessity the right of the bankruptcy court to issue process throughout the United States to protect and preserve the property of the debtor wherever located. This Court upheld the right of the bankruptcy court under the Railroad Reorganization Act to issue extra-territorial injunctive process in the case of *Continental Illinois*

* Hearing before the Committee on the Judiciary of the House of Representatives; 75th Congress, First Session on H.R. 8046, June 1-9, 1937, pages 4, 21, 24, 213, 277, 293.

† 5 *University of Chicago Law Review 139* (1938):

> "Courts and writers alike have suggested that a reorganization court should have extra-territorial jurisdiction to facilitate the reorganization and the management of the corporate business. It has been held that the jurisdiction of the reorganization court is nationwide over tangible property to which the debtor claims title."

Nat'l. Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co., supra. While it is true that Section 77(a) authorized the issuance of process outside the district, we believe the reasoning of this Court therein is sufficiently broad to cover the instant case. In that case, this Court stated:

> "* * * Jurisdiction over the property wherever located carries with it jurisdiction to enjoin, in a proper case, interferences with the property, and this includes by necessary inference, the power to send process to that end for service upon the persons to be enjoined wherever they may be found within the United States."

Here again, however, we have no authoritative decision of this Court determining this important problem with respect to proceedings under Chapter X of the Chandler Act. Insofar as the federal appellate decisions are concerned, we find a wide-open split and a conflict therein. In such cases as *In re Greyling Realty Corp.*, 74 Fed. (2d) 734 (1935), and *In re Prudence Bonds Corp.*, 75 Fed. (2d) 262 (1935), the Second Circuit upheld the right of the bankruptcy court in reorganization proceedings to issue process outside the district. Contra-decisions are to be found in the cases of: *U. S. v. Tacoma Oriental S. S. Co.*, 86 Fed. (2d) 363 (1936), decided by the Ninth Circuit Court of Appeals; *Bovay v. H. M. Byllesby & Co.*, 88 (2d) 990 (1937), decided by the Fifth Circuit Court of Appeals; *In re Prima Co.*, 98 Fed. (2d) 952 (1938), decided by the Seventh Circuit Court of Appeals; and *In re Standard Gas & Electric Co., supra*, decided by the Third Circuit.

The court below held with the latter decisions. The petitioners submit that this Court should grant *certiorari*

for the purpose of determining the conflict between the Circuits and of settling this important problem in corporate reorganization.

D.

ARGUENDO, IF POSSESSION IS THE TEST OF JURISDICTION, THEN UNDER THE DECISIONS OF THIS COURT THE DEBTOR WAS IN POSSESSION OF THE RES IN CONTROVERSY

It is well established that under the old bankruptcy rule the bankruptcy court has the power to hear and determine a controversy as to property in the possession of the bankrupt at the time of the filing of the bankruptcy petition. It has been further established by this Court that said possession may be either actual or constructive and that such jurisdiction includes the right to adjudicate all claims, adverse or otherwise, to said property, including questions of title. See *Taubel-Scott-Kitzmiller Co., v. Fox*, 264 U. S. 426 (1924); *Isaacs v. Hobbs Tie & Timber Co.*, 282 U. S. 734 (1931); *Ex parte Baldwin*, 291 U. S. 610 (1934).

In the immediately preceding portion of this brief petitioners have argued that under the Chandler Act, contrary to orthodox bankruptcy procedure, *property interest* and not *possession* is the test of jurisdiction over the debtor's property. Assuming for the sake of argument, however, that possession is the test of such jurisdiction, then we submit that in the instant case the debtor has met this condition and is in possession of the *res* in controversy, as heretofore defined by this Court.

The petitioners submit that the ruling of this Court in the recent case of *Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478 (1940), is controlling as to jurisdiction in the

instant case, if possession is the proper test therefor. The facts presented in the *Magnolia* case are substantially identical with those in the instant case, except for the differences of names and places. In essence, this Court concluded therein that possession of the surface of the land by the debtor in reorganization was sufficient to support the bankruptcy court's jurisdiction to determine the character of the debtor's title thereto, as against the respondent oil companies, who denied the trustee's title beyond a mere easement to use the surface for railroad purposes. The respondent oil companies were actually exercising and developing mineral rights under a lease granted by someone other than the debtor or its trustee and covering a single tract of land, including that claimed by the trustee.

It is undenied that Mt. Forest owns the land in question and that it is in possession of the surface thereof. Similarly, as in the *Magnolia* case, the corporate respondents herein are actually extracting minerals from a tract of land—to which, in this case the debtor asserts title to all, and in the *Magnolia* case, the debtor asserted title to a part—under a lease granted by some third party other than the debtor or its Trustee, and are denying the trustee's title to the lands beyond the right to use the surface thereof.

The respondents below advanced the metaphysical theory that the *Magnolia* case did not apply because the *res* in controversy in the instant case is not the land containing the minerals, as contended for by the petitioners, but is the intangible, incorporeal right to remove the minerals, which right, it is claimed, is possessed by the corporate respondents through the exercise thereof by conducting mineral operations on the land.

Petitioners submit that this Court has clearly indicated, in such decisions as the *Magnolia* case, *supra*, and *Warren v. Palmer*, 310 U. S. 132 (1940), that in corporate reorganizations it is concerned with realistic and not fictitious possession.

Mt. Forest owns the unquestioned title to, and is in possession of, 52,000 acres of land in Plaquemines Parish, Louisiana. Surely this is sufficient possession to give the bankruptcy court, seeking to reorganize Mt. Forest, jurisdiction to determine the debtor's interest in the minerals contained in this tract of land.

Petitioners, therefore, submit that the Court of Appeals erred in refusing to follow the decision of this Court in the *Magnolia* case and that this Court should grant *certiorari* for the purpose of reversing the decision of the court below with respect thereto.

E.

FINDINGS OF FACT OF A TRIAL COURT ARE BINDING UPON THE APPELLATE COURT UNLESS CLEARLY ERRONEOUS AND MAY NOT BE IGNORED OR DISREGARDED BY SAID APPELLATE COURT.

As petitioners argued both before the Trial Court and the Court of Appeals, the jurisdictional issues are so inextricably involved with the merits that it is impossible to determine jurisdiction without a full and complete hearing on the merits. Able text writers have pointed out that this is not unusual in such proceedings. See 40 *Columbia Law Review* 489-91.

The Trial Court, having the perspicacity to grasp the situation, took respondents' motions to dismiss for lack

of jurisdiction under advisement under Rule 12(d) of the Federal Rules of Civil Procedure and did not pass upon said motions until after the conclusion of the proofs. It fully realized that it could not determine who was in possession of the minerals in dispute until it had heard all of the evidence, had resolved the ambiguity in the reservation in question, and had determined therefrom both the extent of mineral interest owned respectively by Mt. Forest and Cockrell and the extent of the mineral interest leased by Cockrell to the oil and sulphur companies.

Having taken all the proofs, the Trial Court, *inter alia*, found the following facts:

> "It was the clear intention of the parties in making the deed of April 11, 1927, that Ernest Cockrell should reserve and he did, in fact, reserve unto himself only one-eighth of 127/150ths of the minerals.
>
> "It was likewise the intention of the parties in making the deed of April 11, 1927, that Ernest Cockrell should reserve and he did, in fact, reserve unto himself the exclusive right to make a lease for the exploration and development only of said one-eighth of 127/150ths of the minerals reserved by him.
>
> "The Gulf Refining Company of Louisiana and all corporate respondents claiming under it hold a lease from Ernest Cockrell covering his one-eighth of 127/150ths of the minerals in or under the property of Debtor but none of the corporate respondents holds a lease covering the remaining seven-eighths of 127/150ths of the minerals in or under said property, which belongs to Debtor." (R. I-318-319)

Having thus resolved the ambiguity in the reservation before it, and having concluded that the corporate respondents had neither color or right of title to Mt. Forest's interest in the minerals, the Trial Court concluded that Mt. Forest was in possession of the *res* in controversy.

The Court of Appeals, on the other hand, reversed the Trial Court and ordered the Trustee's proceedings dismissed for lack of jurisdiction, without passing upon the merits. It adopted the Trial Court's finding of fact that the Cockrell reservation was ambiguous, but having gone thus far, it ignored the Trial Court's resolution of that ambiguity. The Trial Court found, after a review of all the evidence, that the oil and sulphur companies had no lease and not even any color or right of title to or possession of Mt. Forest's 7/8ths of the minerals. Totally disregarding these findings of fact, which it did not disturb or criticize, the Court of Appeals held the reorganization court to be without jurisdiction, because the oil and sulphur companies were in possession under a lease emanating from Cockrell.

Petitioners do not deny that Cockrell had a right to make a lease to Gulf. But the whole controversy, involving untold millions of dollars, is "What could Cockrell lease?". Assuredly, Gulf has a lease, but the ultimate issue to be determined is the extent of that lease and the minerals covered thereby. *The Trial Court found as a fact that the lease covered only Cockrell's 1/8th of the minerals, and that the corporate respondents had no lease nor even color of title to Mt. Forest's 7/8ths of the minerals.*

That fact was totally disregarded by the Court of Appeals. We submit that it is impossible to decide the jurisdictional issue as to whether the oil and sulphur companies have either possession of or color of title to the minerals in dispute, until the ultimate issue of fact has been determined as to what mineral interest Cockrell leased to Gulf. That question cannot be answered until there has been a complete determination of the merits of the case, and until the "obvious ambiguity" in the reservation has been resolved. This Court has held in numerous decisions that mere forcible possession by an adverse claimant, without color of right, is not sufficient to oust the bankruptcy court of jurisdiction. See *Harrison v. Chamberlin*, 271 U. S. 191 (1926).

We submit that under the well-established law, findings of fact of a trial court are binding upon the appellate court unless found to be clearly erroneous. *State Farm Mutual Automobile Insurance Co. v. Coughran*, 303 U. S. 485 (1938); *Lauf v. E. G. Shinner & Co.*, 303 U. S. 323 (1938); *Law v. United States*, 266 U. S. 494 (1925). Where, as here, the appellate court does not conclude that said findings are erroneous, it cannot deny jurisdiction upon an assumption of fact directly contrary to the findings of fact of the trial judge. The Court of Appeals pitched its jurisdictional decision upon the sole ground that the oil and sulphur companies were in possession under a lease given by Cockrell by virtue of his power to lease contained in the reservation in dispute. That erroneous fact hypothesis cannot stand against the Trial Court's finding of fact, based upon a consideration of all the evidence before it, that none of the oil and sulphur companies had either a lease or any color or right of title to the 7/8ths of the minerals which were owned by Mt. Forest.

F.

THE QUESTIONS INVOLVED ARE OF VITAL IMPORTANCE TO 3500 SHAREHOLDERS OF THE DEBTOR WHO HAVE BEEN ATTEMPTING FOR MANY YEARS TO OBTAIN AN ADJUDICATION OF THEIR RIGHTS TO ONE OF THE MOST VALUABLE MINERAL TRACTS IN THE WORLD, AND SAID SHAREHOLDERS MAY BE LEFT REMEDILESS IF NOT ENTITLED TO PROCEED HERE

It would be difficult to conjure up a set of facts and circumstances which would more cogently demonstrate the necessity for the interpretation of the Chandler Act contended for by the petitioners than is here presented. For many years, Mt. Forest and its shareholders have sought an adjudication on the merits of the debtor's interest in the minerals in Plaquemines Parish, Louisiana. Whenever, in the past, Mt. Forest has sought to corner the oil and sulphur companies in any one jurisdiction, said companies have immediately expressed a preference for trying the case somewhere else, and have made use of every technical device of which they could conceive, to contest the jurisdiction of the particular court before which they were haled.

Suit was started against all the respondents by Mt. Forest in the local court in Plaquemines Parish, Louisiana, in 1936. Immediately, all of the corporate respondents filed exceptions to the jurisdiction. Subsequently, when the Trustee filed his first petition for summary relief against the respondents in the District Court in Detroit, exceptions were filed to that jurisdiction by the oil and sulphur companies. So, at one and the same time,

the corporate respondents were objecting both to the jurisdiction of the State Courts of Louisiana and to that of the Federal Court in Detroit, where the reorganization proceedings of the debtor were pending. The corporate respondents subsequently waived their jurisdictional exceptions in the Plaquemines Parish suit for the obvious purpose of strengthening their case against jurisdiction in the Federal Courts, but the Trustee for Mt. Forest has never adopted, ratified, or in any way taken over the State Court litigation in Louisiana.

Because of the diversity of citizenship and residence of the several respondents, the shareholders of Mt. Forest may be left remediless unless the bankruptcy court, in which the reorganization proceedings are pending, has jurisdiction to determine, as against all the respondents, this controversy on its merits, and has the power to issue its process wherever necessary to bring the respondents into court and to enjoin further depletion of the debtor's property, pending the determination of that controversy.

We submit, in conclusion, that this is precisely the type of situation which the Chandler Act seeks to correct. The debtor cannot possibly be reorganized until the extent of its interest in the minerals in Louisiana is first determined. If the court responsible for the reorganization of Mt. Forest has not the power to hear and determine that dispute, the debtor can never be reorganized.

It is, therefore, respectfully submitted that writs of certiorari should be granted.

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(21)

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1941

No. 763-771

IN THE MATTER OF

MT. FOREST FUR FARMS OF AMERICA, INC.,
a Delaware Corporation,
Debtor.

FRANK FITZGERALD, Trustee for MT. FOREST FUR FARMS OF AMERICA, INC., *Petitioner*,
v.
GULF REFINING COMPANY OF LOUISIANA, et al., *Respondents.*

FRANK FITZGERALD, Trustee for MT. FOREST FUR FARMS OF AMERICA, INC., *Petitioner*,
v.
GULF REFINING COMPANY OF LOUISIANA, et al., *Respondents.*

FRANK FITZGERALD, Trustee for MT. FOREST FUR FARMS OF AMERICA, INC., *Petitioner*,
v.
ERNEST COCKRELL, et al., *Respondents.*

FRANK FITZGERALD, Trustee for MT. FOREST FUR FARMS OF AMERICA, INC., et al., *Petitioners*,
v.
ERNEST COCKRELL, et al., *Respondents.*

DISTRICT COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

ROBERT S. MARX,
FRANK E. WOOD,
EUGENE D. SAUNDERS,
ELDON S. LAZARUS,
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Attorneys for Petitioners.

FOREWORD

The District Court handed down comprehensive findings of fact and conclusions of law. (R. I-305-335; 347-349). In order to assist this Court in its examination of the extensive record before it, we are setting forth herein those findings.

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DISTRICT COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

I. The Debtor, a Delaware corporation, owns the title to a tract of land located in the State of Louisiana upon which was discovered very rich deposits of oil and

sulphur. On March 5, 1930, suit was started in the Circuit Court for the County of Wayne, State of Michigan, by certain stockholders and an injunction was issued by the state court on March 30, 1930, limiting the rights of the officers of the corporation to continue its business. On August 31, 1931, a Receiver was appointed by the Michigan court, and this Receiver continued in possession of the premises and continued to operate the fur ranching business thereon which was conducted by the company prior to his appointment. He continued to do so from the date of his appointment until August 15, 1938. On August 15, 1938, this Court approved a petition for reorganization in accordance with the provisions of Section 77-B of the National Bankruptcy Act, as amended, and Frank Fitzgerald, the petitioner herein, was duly appointed and qualified as Permanent Trustee of the Debtor corporation and immediately went into possession. An appeal from this decision was taken to the Circuit Court of Appeals and the order approving the petition and appointing the Trustee was affirmed on April 5, 1939. See In Re Mount Forest Fur Farms of America, Inc., 103 Fed. (2), 69 (Certiorari denied 308 U. S. 583). During the time that the state Court Receiver had the custody of the property herein involved the respondents herein started to remove sulphur and oil from the premises, and continued to do so after the appointment of the Trustee by this Court.

The Trustee deemed it necessary, in order to protect the interests of the estate, that the respondents herein be required to show cause why they should not either discontinue their operations or account to him for the

proceeds of the soil and sulphur removed. On the return of this order to show cause all of the parties to this controversy were represented by very able counsel and hearings were held in open court. The Trustee assumed the burden of proof, and it developed that there was no material dispute as to the facts and there were no unsettled questions of Louisiana law involved. After the hearings concluded, all the parties were given an opportunity to file briefs and proposed findings of fact and conclusions of law. Excellent briefs have been filed and counsel for all of the parties have cooperated with the Court to the fullest extent.

2. The respondent Ernest Cockrell is a resident of the State of Texas; the respondent Gulf Refining Company is a corporation organized under the laws of the State of Delaware; the respondent Humble Oil and Refining Company is a corporation organized under the laws of the State of Texas; the respondent Gulf Refining Company of Louisiana is a corporation organized under the laws of the State of Louisiana; the respondent Shell Oil Company, Inc. (formerly known as the Roxana Petroleum Corporation) is a corporation organized under the laws of the State of Virginia, the respondent Freeport Sulphur Company is a corporation organized under the laws of the State of Texas.

3. Petitioner, in his original petition filed as Temporary Trustee on August 23, 1938, and in his amended petition filed as Permanent Trustee on January 14, 1940, in substance alleges that the respondents in defiance of the demands and rights of the petitioner and without any substantial adverse claim, but merely under a colorable and pretended claim, are and for several years have

been wrongfully mining and removing oil and sulphur in large quantities from the Debtor's real estate in the petition described; and that said wrongful conduct and acts are harassing and delaying the petitioner in his efforts to protect the assets of the Debtor, interfering with and preventing the formulation of any plan of reorganization depreciating the value of said real estate and removing the oil and sulphur from the possession and control of the Trustee without paying any compensation therefor to the Debtor or its Trustee. The petitions pray for summary relief. On orders to show cause the respondents admit the mining and removal without paying petitioner therefor, of large quantities of oil and sulphur from the said real estate and attempt to justify their doing so by virtue of certain leases hereinafter referred to.

4. The tract of land comprising 52,500 acres more or less, described in the petition, located in Plaquemines Parish, Louisiana, was owned by the State of Louisiana as "Tidal Overflow Lands" until 1914, when, by act of the Louisiana Legislature, it was conveyed to the Buras Levee Board (Res. Ex. 74). In 1919 it was sold and conveyed, without mineral reservation or exception, by the Buras Levee Board at Sheriff's Sale to J. Homer Jordan, Trustee (Res. Ex. 23).

5. On February 3, 1927, at which time said land still belonged to Jordan, Trustee, the respondent Cockrell, who at that time had no right of ownership in it by virtue of contract or otherwise, offered it for sale to the Debtor's predecessor Mt. Forest Fur Farm, in a letter (Ex. 2) reading as follows:

"Feby. 3rd, 1927.

"Mr. S. Bangs, Manager,
"Mt. Forest Fur Farms,
"Mt. Forest, Mich.

"Dear Sir:

"Would you be interested in purchase of fifty to seventy-five thousand acres Louisiana Coast Marsh Lands suitable for rats, at $2.50 per acre cash, subject to reservation of one-eighth of the minerals.

"If so, get in connection with me by wire, above address.

"Yours truly,
"(Signed) E. Cockrell."

6. On February 8, 1927, the respondent Cockrell sent a telegram (Ex. 3) to Mt. Forest Fur Farms which reads as follows:

"Feb. 8, 1927

"Mt. Forest Fur Farm
"Detroit Mich

"Advise you come here at once if interested as no option will be given unless substantial cash deposit made stop Best game preserve in South and lies in a section that will be developed for oil stop Trapping rights alone worth more than price asked for land

"Ernest Cockrell"

7. On March 11, 1927, Bangs, General Manager of Mt. Forest Fur Farms, who became interested in the purchase of said property through Cockrell's letter and telegram quoted above inspected said real estate in company with Nigh, an associate or partner of Cockrell,

who exhibited gas seepages on the property, ignited the same, and as an inducement to a sale pointed out its oil possibilities.

8. On March 12, 1927, at a hotel in New Orleans, the terms of sale were orally agreed upon between Cockrell and Bangs and immediately thereafter the respondent Cockrell personally composed and typed out the sales contract which was then signed by the parties and by the witnesses (Ex. 9). Said written contract in part reads as follows:

> "3. First party agrees to furnish second party abstract of title covering said lands showing clear titles thereto, except as to the deferred payments named herein which are to be assumed by second party when title is passed, and also subject to a perpetual minerals reservation equal to one-eighth of all minerals, including oil, gas and sulphur, which may be found in, under and upon said land; . . ."

9. On March 14, 1927, two days after respondent Cockrell had entered into the written contract to sell the property at $2.00 per acre, reserving one-eighth of the minerals, he obtained a thirty day option from Jordan, Trustee, to purchase an undivided 127/150ths interest in the same property, without mineral reservation or exception, at $1.50 per acre (Ex. 52).

10. Shortly after March 14, 1927, it became known to Mt. Forest Fur Farms that respondent Cockrell was unable to acquire and consequently was unable to convey full ownership of said land. On or about March 17, 1927, payment of the $500 check referred to in the con-

tract of sale was stopped by Mt. Forest Fur Farm pending clearing of the title. Cockrell kept said check and advised Mt. Forest Farm on March 19, 1927, as follows: "We enter into contract with your company in good faith and intend to go through with it." (Ex. 11). On or about March 21, 1927, Cockrell advised Mt. Forest Fur Farm that he would shortly have "deed ready to close deal" and requested Mt. Forest Fur Farm to have $25,000 certified check ready for cash payment (Ex. 12) and on or about the same day Mt. Forest Fur Farm advised Cockrell that he should present his deed to McEnery and "money will be paid as soon as deed is found good" (Ex. 13).

11. On March 29, 1927, Jordan, Trustee, conveyed to respondent Cockrell an undivided 127/150ths of said tract of land without mineral reservation or exception (Ex. 60).

12. On April 11, 1927, respondent Cockrell conveyed by act of sale with full warranty, and undivided 127/150ths of said real estate to Mt. Forest Fur Farm, which said deed contained the following reservation:

> "This Vendor is vested with and specially retains for himself, his heirs and assigns, and reserves from this sale, a perpetual royalty equal to one-eighth of all minerals, including oil, gas and sulphur, which may be found in, under, upon or beneath the lands hereinabove described, together with perpetual and exclusive rights to make and execute mineral leases on all or any portion of said lands for the exploration, development, production and marketing of any and all of said minerals, and also including perpetual rights of in-

> gress and egress solely for said purpose of exploration, development, production and marketing of said minerals, at all times, and likewise the use of so much of the surface of said premises as may be found necessary and convenient for the exploration, development, production and marketing of said minerals which may be found and produced from said premises." (Ex. 29.)

This reservation was suggested and the language thereof was entirely composed by Cockrell.

13. On March 15, 1928, respondent Cockrell, without claim or color of right as to the Moran 23/150ths, and claiming to act under the mineral reservation contained in his deed to Mt. Forest Fur Farms, executed a mineral lease in favor of the Gulf Refining Company of Louisiana purporting to lease the minerals under the entire 52,500 acre tract hereinabove described, which lease was not recorded with the Register of Deeds of Plaquemines Parish, Louisiana, until May 9, 1928. This lease provided for the payment by the lessee, or its assigns, of a royalty of 1/6th of the oil produced and a royalty of $1.00 per ton for sulphur produced. The lease further provided, with respect to said royalties, that:

> "These royalties are based on ownership by grantor of the entirety of the land; if grantor owns less than the entirety, the royalties shall be proportionately decreased." (Ex. 58-a.)

14. On May 7, 1928, the Moran Corporation of the South, Inc., then the owner of an undivided 23/150ths of said property executed a mineral lease to the Roxana Petroleum Corporation, now known as the Shell Oil

Company, Inc., which said lease was recorded on June 6, 1928. (Res. Ex. 33.)

15. On June 30, 1928, Mt. Forest Fur Farm acquired the outstanding undivided 23/150ths of said land by deed from the Moran Corporation of the South, Inc., which said deed reserved to the grantor all the minerals, which reservation reads as follows:

> "From this sale there is especially excepted all oil, gas, sulphur and other minerals of every kind or character and the same are hereby reserved by the said vendor, together with the right of free ingress and egress, at all times, for the purpose of prospecting, exploring, developing, producing, storing and/or marketing said minerals and all such other rights and privileges as may be necessary or incidental thereto." (Ex. 53.)

16. The Debtor, Mt. Forest Fur Farms of America, Inc., acquired from its predecessor, Mt. Forest Fur Farm, the Michigan corporation, by deed dated as of September 28, 1928, all of said Michigan corporation's rights, title and interest in and to the properties acquired by Mt. Forest Fur Farm from Cockrell and the Moran Corporation of the South, together with every right and cause of action which had been vested in Mt. Forest Fur Farm because and by virtue of its ownership of said property (Ex. 56.)

17. Between April 11, 1927, and June 30, 1928, said Michigan corporation was the owner in fee simple and in actual physical possession of an undivided 127/150ths of said land.

18. Between June 30, 1928, and September 28, 1928, said Michigan corporation was the owner in fee simple and in actual physical and exclusive possession of the whole of said land.

19. From September 28, 1928, to August 15, 1938, said lands have been in the actual physical and exclusive possession of said Debtor and its agents and representatives.

20. From August 15, 1938, to date said lands have been and are in the actual physical and exclusive possession of the petitioner trustee of said Debtor by appointment of and under the direction of this Court.

21. The fee simple title of the Debtor to the undivided 23/150ths of said lands acquired through the Moran Corporation of the South, Inc., is encumbered or burdened by the above described servitude or mineral reservation contained in the deed from the Moran Corporation of the South, Inc. The rights retained by this reservation, as also the rights established by the previously granted mineral lease, are not involved in the present litigation.

22. By virtue of the reservation contained in the deed from respondent Cockrell to Debtor's predecessor, it is conceded by the petitioner that said Cockrell reserved to himself a servitude of one-eighth of 127/100ths of the minerals in, on or under said land.

23. The petitioner claims that the Debtor is the owner of all of the minerals in, on or under 127/150ths of said land, less the one-eighth reserved by Cockrell in his deed to the Mt. Forest Fur Farm. The respondent Cockrell

and his lessees and sub-lessees, the other respondents, claim that the respondent Cockrell, subject to his outstanding leases and subleases, is the owner of all the mineral rights in 127/150ths of the said lands by virtue of the reservation contained in said deed from Cockrell to Mt. Forest Fur Farm.

24. The principal problem presented by these proceedings is the construction to be given to the language of the reservation contained in the deed from respondent Cockrell to Mt. Forest Fur Farm.

25. The meaning of said mineral reservation has never been judicially determined. Counsel for respondent Gulf Refining Company, on September 19, 1927, when he was counsel for Roxana Petroleum Corporation, now respondent Shell Oil Company, Inc., and six months before Cockrell made any mineral lease on the property, gave a written opinion (Ex. 24) to the effect that said reservation was ambiguous and said written opinion was communicated to respondent Cockrell on September 21, 1927 (Ex. 25). Counsel for the other corporate respondents have from time to time recognized and admitted ambiguity in various particulars of said reservation.

26. This Court finds as a matter of fact and law that said reservation is ambiguous and finds that in order to interpret the meaning of said reservation it is necessary to examine the preceding agreements, correspondence, conversations and surrounding circumstances in order to determine as a matter of fact the true intention of the parties thereto.

27. Cockrell's original offer to sell the property (Ex. 2) and the written agreement of sale of March 12, 1927 (Ex. 9), show plainly that it was the intention of both parties that the seller was to reserve only one-eighth of the minerals and that the buyer was to receive, with the land, seven-eighths of said minerals. Said agreement was never rescinded, cancelled or terminated, and was only modified to the extent made necessary by Cockrell's inability to convey more than an undivided 127/150ths of said property, which modification called for a proportional reduction of the purchase price. In all other respects the deed of April 11, 1927, was intended by the parties to and did carry out their respective obligations under said agreement of March 12, 1927.

28. The use of the word "royalty" in the deed in place of the word "reservation" in the contract, was made by Cockrell in an endeavor to avoid the operation of that provision of the Louisiana law which prescribes a reservation of minerals for non-user in ten years and was not done for the purpose of enlarging and it was not the intention of the parties that the word used should enlarge the agreed mineral reservation of one-eighth to a mineral reservation of eight-eighths.

29. Annexed to the deed from Cockrell to Mt. Forest Fur Farm of April 11, 1927, as recorded with the Register of Conveyances of Plaquemines Parish, Louisiana, and forming an integral part thereof, is a certified copy of a power of attorney from the Mt. Forest Fur Farm to one Charles P. McEnery, and a certified copy of a resolution of the Board of Directors of Mt. Forest Fur Farm ratifying said agreement of March 12, 1927, hereinabove referred to and authorizing said attorney in fact to execute

an act of sale, limited solely to carrying into effect said prior agreement of March 12, 1927.

30. On October 13, 1928, Ernest Cockrell and the Gulf Refining Company of Louisiana entered into an agreement in writing under which said Gulf Refining Company of Louisiana designated or selected 10,000 acres for drilling and exploration out of said 52,000 acre tract hereinabove described, and abandoned any right to the balance of the acreage which is claimed to have leased from Cockrell under date of March 15, 1928 (Ex. 58-B).

31. Gulf Refining Company of Louisiana subsequently entered into a joint working agreement with Humble Oil & Refining Company and Shell Petroleum Corporation (now Shell Oil Company, Inc.) under the terms of which all three of said companies became jointly interested in the rights granted by Ernest Cockrell to Gulf Refining Company of Louisiana under the above described mineral lease and by which Humble Oil & Refining Company was designated to act as the operating company in the exploration and development of the rights granted by said mineral lease (Ex. 88-90).

32. Humble Oil and Refining Company drilled for oil upon the designated area, and on June 17, 1931, brought in a producing well. Since that time Humble Oil and Refining Company has drilled twenty-three wells upon said property, twelve of which have in the past produced oil and seven of which are presently producing oil.

33. From June 17, 1931, to March 1, 1940, Humble Oil and Refining Company has extracted a total of 2,714,311.26 barrels of oil from said property of the market value of $1,925,861.36. Since the date of the

appointment of the petitioner as Trustee for the Mt. Forest Fur Farms of America, Inc., on August 15, 1938, to March 31, 1940, said Humble Oil and Refining Company has produced and disposed of 421,438.13 barrels of oil from said property having a market value of $213,907.77, exclusive of royalties. Said Humble Oil and Refining Company is now extracting approximately 600 barrels of oil per day from said property.

34. On February 10, 1932, Freeport Sulphur Company obtained and accepted an assignment and sublease from the Gulf Refining Company, Humble Oil and Refining Company and the Shell Petroleum Corporation, purporting to give it the exclusive right to mine sulphur from said designated area hereinabove described.

35. Freeport Sulphur Company drilled the first prospect well on said property on or about March 15, 1932, and began producing sulphur from said property in December, 1933. Since that date one hundred seventeen sulphur wells have been drilled on the land area involved, and a total of 1,621,060 tons of sulphur have been produced from said land area up to December 31, 1939, from which a total of approximately $25,000,000.00 has been realized. Freeport Sulphur Company is likewise producing substantial quantities of sulphur from the bed of Lake Grand Ecaille under and by virtue of a lease from the State of Louisiana. The Debtor makes no claim to the sulphur produced from said lake bed and the same is therefore not an issue in these proceedings.

36. Freeport Sulphur Company has produced a total of 647,494 tons of sulphur from the property involved since the appointment of the petitioner as Trustee of Mt.

Forest Fur Farms of America, Inc., and is now producing and removing from said property approximately 40,000 tons of sulphur per month. This sulphur has a present market value of approximately $15.39 per ton after providing for freight and handling charges. Over the period from December, 1933, to date, the average market price has been approximately $16.66 per ton. The cost of production, exclusive of royalties but including overhead expense, federal taxes, etc., is $7.65 per ton. Royalties equal to $1.15 per ton are being paid to Cockrell, Moran, et al., and overriding royalties equal to approximately $2.84 are being paid to Oil Company respondents.

37. On January 14, 1933, Freeport Sulphur Company acquired from the Debtor Corporation a surface lease for a period of ninety-nine years of a portion of the aforesaid property of Debtor Corporation. Under the terms of this lease Freeport Sulphur Company was entitled, as lessee, to make use of the surface of the leased premises, but the right to exploit any minerals in and under said leased premises was specifically excluded. Freeport Sulphur Company has, since the approximate date of said lease, and under the authority thereof, occupied said leased premises as the tenant or lessee of Debtor Corporation (Ex. 71-A).

38. It was the clear intention of the parties in making the deed of April 11, 1927, that Ernest Cockrell should reserve and he did, in fact, reserve unto himself only one-eighth of 127/150ths of the minerals.

39. It was likewise the intention of the parties in making the deed of April 11, 1927, that Ernest Cockrell

should reserve and he did, in fact, reserve unto himself the exclusive right to make a lease for the exploration and development only of said one-eighth of 127/150ths of the minerals reserved by him.

40. The Gulf Refining Company of Louisiana and all corporate respondents claiming under it hold a lease from Ernest Cockrell covering his one-eighth of 127/150ths of the minerals in or under the property of Debtor but none of the corporate respondents holds a lease covering the remaining seven-eighths of 127/150ths of the minerals in or under said property, which belongs to Debtor.

41. The ambiguity of the phraseology contained in the reservation in the deed from Cockrell to Mt. Forest Fur Farm has been known to and recognized by all of the corporate respondents and no transactions were had by any of said corporate respondents with Cockrell or any other person or corporation claiming under him upon the belief that said reservation was clear and unambiguous.

42. The Gulf Refining Company of Louisiana paid $26,250.00 to Ernest Cockrell on March 15, 1928, for the privilege of "shooting" (making geophysical exploration upon) the property hereinabove described solely because of the reliance placed by L. P. Garrett, assistant to the president of the respondent company, upon the word of Ernest Cockrell that he owned all the minerals in said above described property and no provision was made for the repayment of said sum in the event said Cockrell did not own such mineral rights above described. These shooting rights were exercised after it was known to Gulf

Refining Company of Louisiana that Cockrell did not own all said minerals.

43. In October, 1928, an extension agreement was entered into by and between said Cockrell and said Gulf Refining Company of Louisiana under which Gulf Refining Company of Louisiana paid an additional $25,000.00 to Cockrell, and all warranty of title by said Cockrell as to his mineral rights in the land covered by the lease of March 15, 1928, was eliminated (Ex. 58-B). This was done with actual knowledge by Gulf Refining Company of Louisiana that Cockrell did not own all of the minerals in said leased land and such fact was then disclosed by the public records of Plaquemines Parish.

44. Before entering into said mineral lease with Ernest Cockrell, respondent Gulf Refining Company of Louisiana knew of the ambiguity in the reservation contained in the deed from Cockrell to Mt. Forest Fur Farm, and entered into said lease in disregard of the rights of said Mt. Forest Fur Farm; it did not rely upon the public records or seek the advice of legal counsel as to Cockrell's rights under said reservation and as to the respective mineral interests of said Cockrell and Mt. Forest Fur Farm, and made no inquiry to ascertain the facts or the basis upon which Mt. Forest Fur Farm claimed seven-eighths of 127/150ths of the minerals. Nor did it exercise the ordinary care which should have been exercised by such corporation in taking title to valuable property rights upon which it expected to make large investments.

45. Before entering into the joint operating agreement, respondents Shell Petroleum Corporation and

Humble Oil and Refining Company knew of the ambiguity with respect to the mineral reservation contained in the deed from Cockrell to Mt. Forest Fur Farm. Both of said respondents were advised by their counsel as to said ambiguity; they did not rely upon the public records and made no inquiry to ascertain the facts and did not inquire of Mt. Forest Fur Farm as to the basis of its claim to seven-eighths of 127/150ths of the minerals; nor did said respondents in the transaction exercise the ordinary care which should have been exercised by such corporations in such matters.

46. In making and accepting the sublease from respondent oil companies, Freeport Sulphur Company knew of the ambiguity in the mineral reservation contained in the deed from Cockrell to Mt. Forest Fur Farm. No written opinion was requested of its counsel and the only counsel who gave an opinion testified that he gave only a verbal opinion and that in giving such opinion he was in no way concerned with an interpretation of the respective mineral rights of said Cockrell and said Mt. Forest Fur Farm, and did not examine the documents annexed to and recorded with the deed of April 11, 1927, or the agreement of March 12, 1927, referred to therein.

47. On November 7, 1930, respondent oil companies were advised by Edward M. Heath, then attorney for Mt. Forest, that said company claimed seven-eighths of the minerals. In its answer filed in the so-called Buras Levee suit, the Debtor Corporation again gave notice to the respondent oil companies and to Cockrell of its claim to seven-eighths of the minerals and by stipulation of counsel entered into, in open court, said claim was reserved out of said Buras Levee litigation. Since 1931

all of the respondents have had notice to the effect that Debtor Corporation claimed seven-eighths of the minerals found in, on or under said above-described property.

48. In March, 1934, the oil companies attempted to obtain the consent to and execution by Debtor of a written agreement prepared by counsel for said respondents expressly or tacitly recognizing and adopting the Cockrell lease and agreeing that their failure to pay royalties to said Mt. Forest Fur Farms of America, Inc., on minerals produced from said above-described property would not constitute a forfeiture of said lease in the event that it should be ultimately determined that Mt. Forest Fur Farms of America, Inc., was the owner of seven-eighths of said minerals. Mt. Forest Fur Farms of America, Inc., refused to enter into this agreement (Ex. 66).

49. During 1934 and up to January, 1935, Freeport Sulphur Company attempted to obtain a similar agreement from Mt. Forest Fur Farms of America, Inc., with respect to sulphur royalties, and again said Mt. Forest Fur Farms of America, Inc., refused to enter into such an agreement (Ex. 68, 69).

50. No royalties on any oil or sulphur produced from said property hereinabove described have ever been paid by any of the respondents to Mt. Forest Fur Farm, a Michigan corporation, to Mt. Forest Fur Farms of America, Inc., a Delaware corporation, and the within Debtor, to Harry J. Merritt, State Court Receiver for the Debtor Corporation, the petitioner as Trustee for the Debtor Corporation, or any other official, agent, or attorney for said Debtor Corporation.

51. Since March 5, 1930, the Debtor Corporation has been in continuous and uninterrupted litigation involving internal difficulties.

52. Immediately after oil began to be produced on June 17, 1931, from the property involved in this suit, the Board of Commissioners of the Buras Levee District of Louisiana instituted a suit in the Twenty-fifth Judicial District of the Parish of Plaquemines, Louisiana, against the Mt. Forest Fur Farms of America, Inc., Ernest Cockrell, the Moran Corporation of the South, Inc., Humble Oil & Refining Company, Gulf Refining Company of Louisiana and the Shell Petroleum Corporation. Said suit was what is called in Louisiana a petitory action and its purpose, in the nature of ejectment, was the recovery of an area comprising 1136 acres alleged to be located in Sections 11, 12 and 13 in Township 20 South, Range 26 East. The sole basis of the claims asserted by plaintiff was that the property of Debtor should be surveyed in a certain manner.

53. The Supreme Court of Louisiana decided that case against the Buras Levee Board and in favor of the Mt. Forest Fur Farms of America, Inc., et al., on October 30, 1933, a petition for rehearing being denied on January 2, 1934. Said case is reported in 178 La. 696, 152 So. 497.

54. In its decision in the aforesaid Buras Levee Board case, the Supreme Court of Louisiana as a matter of fact adopted the surveying theory advanced by Mt. Forest Fur Farms of America, Inc., Ernest Cockrell, Moran Corporation of the South, Inc., Gulf Refining Company of Louisiana, Shell Petroleum Corporation and

Humble Oil & Refining Company, and rejected the theory of surveying advanced by the Board of Commissioners of the Buras Levee District.

55. The Supreme Court of Louisiana likewise held, as "outstanding and indisputable facts":

> "(7) The State intended to grant, and did grant to the levee board, and the board intended to sell, and did sell, to Jordan, trustee, all the land area within this parallelogram 6 by 9 miles, all according to the Payne plats, this being apparent, because the state was obligated under legislative enactment to transfer all its lands of this character to the board; the purpose of the board being to get all it could for its property.
>
> "(8) It is immaterial to the state, to the levee board, or these defendants whether the Payne plats showed ideal or full sections, or whether they showed short or irregular sections; the fact being that they did show all the land acreage in the entire territory."

56. Since said decision neither the Board of Commissioners of the Buras Levee District nor the Parish of Plaquemines has ever attempted to disturb the possession of title of the Mt. Forest Fur Farms of America, Inc., or its Trustee, nor have they or either of them instituted any further proceedings against said Mt. Forest Fur Farms of America, Inc., or its Trustee asserting any claim to any part of the entire tract of 52,500 acres hereinabove more fully described.

57. Following the decision in the so-called Buras Levee case hereinabove referred to, Ernest Cockrell filed

a suit against the Board of Commissioners of the Buras Levee District in the United States District Court for the Eastern District of Louisiana, asking that a declaratory judgment be rendered adjudging the decision of the Supreme Court of Louisiana in the so-called Buras Levee Board case to be res adjudicata as to all land situated in Township 19 South, Range 26 East and Township 20 South, Range 26 East. The District Court granted a judgment in favor of Cockrell, reported in 16 Fed. Supp. 273, but upon appeal the Circuit Court of Appeals for the Fifth Circuit reversed the lower court in a decision reported in 91 Fed. (2d) 412. Application to the Supreme Court of the United States for writ of certiorari was denied on November 1, 1937, reported in 302 U. S. 740.

58. The United States Circuit Court of Appeals for the Fifth Circuit in said case held that the decision of the Supreme Court of Louisiania in the so-called Buras Levee case was res adjudicata only as to the land area actually involved therein. This area admittedly included all the land from which oil has been produced and is presently being produced, and a portion of the land from which some of the sulphur has been produced.

59. The evidence in this case, presented by the respondents, affirmatively establishes that all of the operating area, other than the lake bed portion, thereof, from which oil and sulphur has been and is being produced, is located on the property of the debtor.

60. Respondents have not identified or described any land which they allege is claimed by the Buras Levee

Board.

61. On the same day that the Supreme Court of the United States denied certiorari in the declaratory judgment suit above referred to, Ernest Cockrell filed a second suit against the Board of Commissioners of the Buras Levee District in the United States District Court for the Eastern District of Louisiana, being known as Equity Suit No. 496, being an action to quiet Cockrell's alleged title to a certain mineral interest in the land in Township 19 South, Range 26 East and Township 20 South, Range 26 East, except the 1136 acres hereinabove referred to. This suit was never tried but was dismissed without prejudice by Ernest Cockrell.

62. In May, 1938, all respondents herein entered into an agreement of compromise with Buras Levee Board, Parish of Plaquemines and the State of Louisiana, under the terms of which, among other things, they agreed to pay certain royalties to the Parish of Plaquemines as assignee of Buras Levee Board upon sulphur produced from land belonging to Debtor Corporation, and they fixed as between themselves the boundary line between said land and the bed of Lake Grande Ecaille (Res. Ex. 56).

63. Although the Freeport Sulphur Company claims to hold leases under the Buras Levee Board, said company has never paid any royalties under said leases. The only sums ever paid by Freeport Sulphur Company to the Buras Levee Board or to the Parish of Plaquemines, its successor, have been paid pursuant to said compromise agreement of May, 1938. In view of the surrounding circumstances the making of said compromise

agreement constitutes no evidence of any claim to the property of the debtor on the part of the Buras Levee Board or the Parish of Plaquemines.

64. Under said compromise agreement of May, 1938, any and all rights which respondent Cockrell may have acquired or secured from or been subrogated to by Buras Levee Board and/or the Parish of Plaquemines with respect to the property of the Debtor enure to the benefit of the Debtor under the warranty made by Cockrell in his conveyance to Mt. Forest Fur Farm hereinabove described.

65. Neither the Mt. Forest Fur Farms of America, Inc., nor any of its officers, agents or representatives were parties to the aforesaid compromise agreement or knew of its intended execution, and a studied effort was made on the part of all the respondents not to inform Debtor or its representatives that said agreement had been executed. The oil company respondents collaborated with respondent Cockrell in an effort to use said compromise agreement of May, 1938, "to afford said Cockrell the fullest protection possible against claims of Mount Forest Fur Farms and Mount Forest Fur Farms of America" (Ex. 109).

66. Neither the Parish of Plaquemines nor the Board of Commissioners of the Buras Levee District are asserting any adverse claims against petitioner or Mt. Forest Fur Farms of America, Inc., in this proceeding and the adverse claims of title which the respondents attribute to the Parish of Plaquemines and the Board of Commissioners of the Buras Levee District have no serious foundation.

67. Respondents have pleaded that the decision rendered by the Supreme Court of Louisiana, in the case entitled and numbered Mt. Forest Fur Farms of America, Inc. v. Ernest Cockrell, No. 31,791 of the docket of said Court, reported in 179 La. 795; 155 So. 228, is res adjudicata and is a complete judicial estoppel against petitioner to the right of respondents to produce and market minerals from the "operating area."

The Court has examined the record and opinion in the above-entitled action, and finds that the only matter put in issue was the right of Cockrell to retain for himself a so-called bonus of $50,000.00 which he had received from the Gulf Refining Company of Louisiana as a consideration for the execution by him of the mineral lease granted by him to Gulf Refining Company on March 15, 1928, and for the extension of said lease to which lease the debtor was not a party.

The Supreme Court of Louisiana held that Ernest Cockrell acted for his own account in making that lease and not as agent for Mt. Forest Fur Farms of America, Inc., and that he was accordingly entitled to receive and retain whatever was paid to him as a bonus for making or extending the lease. The Court was not asked to decide, and did not decide, as has been admitted by attorneys for the corporate respondents, the percentage of mineral interest in the land of the Debtor Corporation affected by that lease. No court has heretofore been called upon to determine, or has adjudged, the percentage of the mineral interest affected by said lease.

68. (a) Before bankruptcy in March, 1936, and while the Debtor was in receivership in the Circuit

Court of Wayne County, Michigan, a suit was filed on behalf of the Debtor and others in the Twenty-fifth Judicial District Court for the Parish of Plaquemines, Louisiana, against the respondents herein and others praying for a declaration, made contradictorily, as to the rights of the parties to said suit as to the matters set forth in said petition. Said suit is still pending and has never been tried or determined. The petitioner in these proceedings has never become a party to said proceedings nor has he ratified or adopted said litigation.

(b) On or about April 9, 1936, one Bruce Nunez, was appointed curator ad hoc for the respondent, Cockrell, in said suit and on the same day he filed exceptions to the jurisdiction on behalf of Cockrell, as well as exceptions of misjoinder and of no cause of action. On August 5, 1936, the respondent Cockrell and Herold, Cousin & Herold, filed an answer to the merits in said suit asserting as special defenses estoppel and res adjudicata.

(c) On April 15, 1936, Gulf Refining Company of Louisiana, Gulf Refining Company, Humble Oil and Refining Company, Shell Petroleum Corporation and Freeport Sulphur Company filed exceptions to the jurisdiction in said suit alleging that said Court did not have jurisdiction over the person of said corporations. On March 9, 1939, seven months after the petitioner herein had filed his original petition for summary relief against the respondents, all of said corporate respondents filed pleas of estoppel and res adjudicata, exceptions and motions to strike, and exceptions of no cause or right of action.

(d) In the forepart of November, 1939, the respond-

ent Cockrell, his curator ad hoc and his counsel and associates, fixed for trial on Tuesday, November 14, 1939, the exceptions and motions to strike, the exceptions of no cause or right of action and pleas of estoppel and res adjudicata heretofore filed by said parties. Upon application of the petitioner this Court entered an order on February 22, 1940, enjoining Cockrell, et al. from proceeding with said hearing in Plaquemines Parish, Louisiana, pending the further order of this Court.

(e) This Court has the sole and exclusive jurisdiction over the reorganization of the Debtor. No reorganization can be effected until the claim of the petitioner against the respondents herein is heard and determined. This Court has heretofore enjoined the respondent, Cockrell, from proceeding in the Plaquemines Parish suit, as above described, in order that the petitioner's claim against all of the respondents herein can be adjudicated promptly under the direction and control of this Court by summary proceedings as a necessary and indispensible prerequisite to the reorganization of the debtor.

CONCLUSIONS OF LAW

1. The petitioner, the Debtor Corporation, and its predecessor in title, Mt. Forest Fur Farm, have been in continuous, open, undisturbed and exclusive physical possession of the property involved in this controversy since June 30, 1928.

2. It is necessary in order to protect and preserve the estate of the Debtor Corporation and to prevent the depletion and exhaustion of the valuable mineral rights of the Debtor Corporation that this Court hear and

determine in a summary proceeding the controversy set forth in the pleadings.

3. All of the parties necessary to a complete adjudication of the pending controversy are presently before the Court. The Moran Corporation of the South, Incorporated, the Parish of Plaquemines or the Board of Commissioners of the Buras Levee District are not necessary or indispensible parties to this proceeding.

4. There are no unsettled questions of Louisiana law involved in this controversy of such a nature as to require the bringing of a plenary action in the State of Louisiana. The delay incident to the bringing of a plenary action in Louisiana and the difficulty and uncertainty in getting personal jurisdiction and venue over all the necessary parties would materially hamper the Trustee of the Debtor in the performance of his duties and cause serious and perhaps irreparable loss and damage to the estate of the Debtor.

5. Under the Louisiana Civil Code when a contract, deed, or act of sale is ambiguous, the Court is entitled to look to all the preceding agreements, correspondence, conversations, surrounding circumstances and any other parol evidence which will inform and advise the Court as to the true intention of the parties.

6. An ambiguous mineral reservation contained in a deed or act of sale, under the Civil Code of Louisiana, is to be construed most strongly against the party composing the same; it is likewise to be construed in favor of the purchaser as against the seller and also in favor of the grantee as against the reservor.

7. When a written recorded document makes reference to another instrument or instruments in writing, it is the duty and obligation of the party relying upon said written recorded instrument to use the ordinary prudence of a diligent man in examining said instrument or instruments referred to therein.

8. If the Court were required to disregard the parol or extrinsic evidence and to construe said ambiguous mineral reservation solely from the face of the instrument, then likewise in said event under the Civil Code of Louisiana all doubts would have to be resolved most strongly as against Cockrell. If the Court were required to thus limit itself to the face of said instrument it would construe said reservation to have the same meaning as it would if it considered all parol and extrinsic evidence offered by the parties in interest.

9. Under the mineral reservation contained in the deed from Ernest Cockrell to Mt. Forest Fur Farm dated April 11, 1927, Cockrell reserved unto himself only one-eighth of 127/150ths of the minerals in, on or under the land conveyed and seven-eighths of 127/150ths of the minerals were conveyed and transferred to Mt. Forest Fur Farm.

10. Under the reservation above referred to Cockrell reserved unto himself the exclusive right to make a lease for the exploration and development of said one-eighth of 127/150ths of the minerals and the lease which he granted unto the Gulf Refining Company of Louisiana dated March 15, 1928, was executed pursuant to said power.

11. Cockrell had no power or right to make a lease for the seven-eighths of 127/150ths of the minerals sold and conveyed by him to Mt. Forest Fur Farm, the ancestor in title of the Debtor Corporation, and neither the Gulf Refining Company of Louisiana nor any of the corporate respondents claiming there under it has ever had or now has a lease covering said seven-eighths of 127/150ths of the minerals owned by the Mt. Forest Fur Farms of America, Inc.

12. Neither the petitioner, Mt. Forest Fur Farms of America, Inc., nor its ancestor in title, Mt. Forest Fur Farm, ever ratified, accepted or adopted said lease granted by Cockrell to Gulf Refining Company of Louisiana dated March 15, 1928, in so far as said seven-eighths of 127/150ths of the minerals are concerned, and the petitioner is not now estopped to deny that the corporate respondents or any of them hold undler a lease covering said seven-eighths of 127/150ths of the minerals owned by said petitioner.

13. If the corporate respondents had obtained a mineral lease covering the seven-eighths of the 127/150ths of the minerals of the Debtor, whether by grant from Cockrell or by ratification by the Debtor, such lease was forfieited, dissolved and terminated prior to August 23, 1938, because of the failure of any and all of the corporate respondents to perform, as to the Debtor, any and all of their obligations of such lease in total disregard of the demands of the Debtor for the payment of any rents or royalties that were due thereunder.

From August 23, 1938, the date of the original petition for summary relief filed by the Trustee herein as against

the respondents, to the date hereof, none of the corporate respondents have paid, offered to pay or tendered to the Debtor or to the Clerk of this Court any rents or royalties that would be accruing during said period if the corporate respondents were operating under a mineral lease covering seven-eighths of 127/150ths of the minerals owned by the Debtor. Therefore, if it be assumed that the corporate respondents had obtained such a mineral lease they would not at this time be entitled in equity to cure any default that may exist as to the non-payment of rents or royalties to the Debtor.

14. If the Debtor corporation, prior to the filing of the original petition for reorganization in these proceedings, and while under the control and direction of the Receiver appointed by the Circuit Court of Wayne County, Michigan, had offered to ratify or adopt the lease granted by Cockrell to Gulf Refining Company of Louisiana, on March 15, 1928, in so far as the seven-eighths of the 127/150ths of the minerals owned by the debtor were concerned, said offer to ratify or approve was conditional upon payment by the corporate respondents of seven-eighths of 127/150ths of the royalties due thereunder. There having been no payment of any royalties by any of the respondents to the Debtor at any time, it follows that if there were a conditional ratification or approval it was never accepted by any of the respondents herein and is not now binding upon the debtor or the petitioner.

15. No right has been asserted in these proceedings by the Board of Commissioners of Buras Levee District or by the Parish of Plaquemines as to any of the minerals in the property described in the petition; nor is any suit

or action pending in any other court brought by the Board of Commissioners of Buras Levee District or the Parish of Plaquemines claiming any right, title or interest in the minerals in, on or under the property in the petition described; the respondents have no right or standing to assert any such claim on behalf of the Board of Commissioners of Buras Levee District or the Parish of Plaquemines.

16. Under the law of Louisiana a mineral reservation prescribes in ten years for non-user as to non-contiguous property. The petitioner has excepted from these proceedings and has reserved for future determination the entire question as to whether or not the mineral reservation contained in the deed from Cockrell to Mt. Forest Fur Farm dated April 11, 1927, has prescribed as to any non-contiguous property in the entire tract of 52,500 acres involved in this controversy.

17. The respondents Freeport Sulphur Company and Humble Oil and Refining Company have taken assets of the corporation and should be required to compensate the estate for the value of these assets. The Trustee is entitled to seven-eighths of 127/150ths of the proceeds of the minerals so produced. A court of bankruptcy has an excluive and non-delegable control over the administration of an estate in its possession, and in carrying out this duty entrusted to the Court it is essential that the officers deal fairly with all parties, having in mind at all times the best interests of the estate to be administered. The companies are entitled to be compensated for the cost of producing the minerals belonging to the estate, including overhead expenses and a sufficient sum to be

set aside as a depreciation reserve which will amortize their investment in plant and improvements over a reasonable period of time. These companies should also be entitled to a reasonable profit, and in estimating this profit among other matters to be taken into consideration are the size of the investment and the risk involved. If the Trustee and these two respondents can agree upon a basis of settlement which is fair to all parties, such a settlement will be approved. If they are unable to reach a settlement this matter shall be re-submitted for an accounting. If the settlement herein suggested is not completed before July 10th, 1940, an injunction shall issue restraining these respondents from taking any more of the oil or sulphur from the premises.

An order may be entered in accordance with these findings.

ARTHUR F. LEDERLE
United States District Judge.

June 20, 1940.

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Finding of Fact No. 2: The last word in said paragraph is hereby changed from "Texas" to "Delaware".

Finding of Fact No. 51 is hereby amended to read as follows:

"Since March, 1930, the Debtor corporation has been in continuous and uninterrupted litigation involving internal difficulties. On March 5, 1930, a stockholders'

suit was brought against the Debtor corporation, et al., in the Circuit Court for the County of Wayne and on August 21, 1931, Harry J. Merritt was appointed receiver for the Debtor corporation in said proceedings (Exhibit 81). Subsequently the Debtor became enmeshed in a series of lawsuits brought in an effort to reorganize said corporation and to transfer jurisdiction thereover to the federal courts. Said litigation included an involuntary proceeding brought against the Debtor corporation under Section 77-B of the Bankruptcy Act, a voluntary proceeding brought by Mt. Forest Fur Farm, a Michigan corporation, and the within voluntary proceedings brought by the Debtor. All of said efforts were opposed by the State Court Receiver and his counsel, during which time the Debtor was suspended between the jurisdiction of the state and federal courts, and it was not until certiorari was denied by the Supreme Court of the United States in the within proceedings on October 9, 1939 (84 L. Ed. 85) that the Debtor, for the first time, was assured of its jurisdiction and was able to proceed against the respondents."

Paragraph 3 of Finding of Fact No. 67 is hereby amended to read as follows:

"The Supreme Court of Louisiana held that Ernest Cockrell acted for his own account in making that lease and not as agent for Mt. Forest Fur Farms of America, Inc., and that he was accordingly entitled to receive and retain whatever was paid to him as a bonus for making or extending the lease. The Court was not asked to decide, and did not decide, the percentage of mineral interest in the land of the Debtor corporation affected by that lease; likewise, the Court was not asked to decide,

and did not decide, as has been admitted by attorneys for the corporate respondents, the percentage of mineral interest owned by the Debtor corporation in said land. No court has heretofore been called upon to determine, or has adjudged, the percentage of the mineral interest affected by said lease."

Conclusion of Law No. 7 is hereby amended to read as follows:

"When a written recorded and ambiguous document makes reference to another instrument or instruments in writing, it is the duty and obligation of the party relying upon said written recorded instrument to use the ordinary prudence of a diligent man in examining said insrtument or instruments referred to therein."

ARTHUR F. LEDERLE
District Judge